47. We note that the Commission has expressly declined to exercise permissive authority over systems integrators for whom telecommunications represents a small fraction (less than five percent) of total revenues derived from systems integration services.[143] To the extent that we explicitly exercise our permissive authority to assess enterprise communications services, should we also eliminate the system integrators exemption, so that systems integrators would contribute even if their telecommunications revenues were under the current threshold? In the alternative, if we determine that we should clarify that certain enterprise communications services are not subject to contributions, should we modify the systems integrators exemption, and if so how? How would our decision to clarify the contribution obligations for any category of these services affect current contributions?

48. The Telecommunications Industry Association (TIA) estimates 2011 revenues of approximately $41 billion for enterprise services, including data communications services (which can be used for, among other things, Internet access), unified communications, videoconferencing public room services, audio conferencing service bureau spending, and web conferencing.[144] We seek comment on the size of the enterprise communications services marketplace, including comment on the TIA estimates, and whether this marketplace is likely to grow or shrink in the future. If commenters believe the estimates are too high or too low, they should provide specific data to more accurately size this segment of the communications marketplace. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in Section V below. We seek comment and data on the extent to which service providers are currently treating these services as assessable.[145] In Section V.A.2 below, we seek comment on how revenues from such services should be apportioned into assessable and non-assessable segments if the Commission continues with a revenues-based methodology. We encourage commenters to provide comments and data regarding the structure of typical enterprise communications services contracts. In particular, we seek comment on whether such contracts typically break out costs for different parts of the services provided and, if so, how they generally do so.

2. Text Messaging Providers

49. *Background.* The Commission has not addressed whether text messaging revenues are subject to federal universal service contribution requirements. As noted above, the Act requires all providers of interstate telecommunications services to contribute to the Fund, and our rules require providers to contribute based on their telecommunications service revenues.[146] Moreover, the obligation has never been limited to voice services.[147] On April 22, 2011, USAC filed a request for guidance from the Commission regarding the proper treatment of text messaging for USF contribution purposes.[148] USAC stated that some carriers are reporting text messaging revenue as assessable telecommunications

[143] Systems integrators are non-facilities-based, non-common carrier providers of telecommunications that integrate the telecommunications they purchase from other providers with computer capabilities, data processing, and other services to offer an integrated voice and data package to their customers. *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5472, para. 278. System integrators that derive more than five percent of systems integration services revenues from telecommunications are required to contribute to universal service. *Id.* at 5472-3, para. 280; 47 C.F.R. § 54.706(d).

[144] *See* 2012 TIA Market Review and Forecast at 3-4.

[145] We note that companies may request confidential treatment for any such company-specific data, or related data, submitted in response to this Notice. 47 C.F.R. § 0.459.

[146] 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.709.

[147] *See, e.g.*, 47 C.F.R. § 54.706(a)(13)–(14) (listing "telegraph" and "video services" (to the extent provided on a common carrier basis) among the services on which providers are assessed).

[148] *See* USAC 2011 Guidance Request, *supra* n.124.

revenues, and other carriers are reporting revenues from these services as non-assessable information services revenues.[149]

50. *Discussion.* We seek comment on whether text messaging services should be assessed in light of our proposed goals for contribution reform. To what extent is there a lack of clarity within the industry over whether such services are subject to universal service contributions? Would adopting a clear rule establishing that text messaging is in the contribution base further the Commission's efforts to promote fairness and competitive neutrality? If providers of text messaging services were required to contribute, would that create competitive distortions between text messaging service providers and providers that offer applications that allow users to send messages using a wireless customer's general data plan – applications that consumers may increasingly view as a substitute to text messaging? Given the rapid growth in the text messaging marketplace, a number of stakeholders have suggested in recent years that text messaging revenues should be added to the contribution base to enhance the sustainability of the Fund.[150] To what extent would including these services in the contribution base add to the stability of the Fund? If we modified our rules to explicitly assess text messaging, what would be an appropriate transition period?

51. If we conclude text messaging services should be assessed, should we exercise the Commission's permissive authority under section 254(d) of the Act to assess providers of these services, without determining whether such services are telecommunications services or information services?[151] Alternatively, if we conclude that text messaging services should not be assessed, should the Commission conclude that even if such services are telecommunications services, we should exercise our forbearance authority under section 10 of the Act to exempt text messaging from contribution obligations?[152]

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[149] In addition, the Commission has a pending Petition for Declaratory Ruling asking whether text messaging is a telecommunications service or an information service. *See* Petition of Public Knowledge *et al.* for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules, WC Docket No. 08-7, at 7–13 (filed Dec. 11, 2007) (arguing that text messaging services meet the requirements for classification as a "commercial mobile service" under Section 332 of the Act and are thus subject to Title II regulation). Some parties argue that text messaging is a Title II service, subject to USF contributions. *See, e.g.*, Comments of the National Telecommunications Cooperative Association, WC Docket No. 06-122 (filed June 6, 2011); Comments of Public Knowledge and National Hispanic Media Coalition, WC Docket No. 06-122 (filed June 6, 2011). Other parties argue that text messaging is an information service, and cannot be assessed until the Commission amends its rules to encompass text messaging. *See, e.g.*, CTIA – The Wireless Association Comments, WC Docket No. 06-122, at 13 (filed June 6, 2011) (arguing that SMS is an information service because it involves the storing and forwarding of messages, data conversion, and data retrieval functions); Comments of Verizon Wireless, WC Docket No. 06-122 (filed June 6, 2011).

[150] *See, e.g.*, AT&T Petition for Immediate Commission Action to Reform Its Universal Service Contribution Methodology, WC Docket No. 06-122, at 8–9 (filed July 10, 2009) ("Anyone in their 20's will tell you that text-messaging . . . and other applications are increasingly important avenues of communication, which are not subject to universal service contributions . . . . Unless the Commission is prepared to use its ancillary jurisdiction in ways that it has not previously, the consequences of these changes will be an even smaller contribution base"); NTCA Oct. 8, 2010 *Ex Parte* Letter at Attach. p. 8 (arguing that including text messaging revenues in the contribution base would help remedy the "supply" of universal service funding); XO Sept. 17, 2010 *Ex Parte* Letter at 8 (recommending that the Commission, at a minimum, consider making at least a reasonable allocation of the revenue attributable to the telecommunications transmission input for wireless text messaging services assessable).

[151] If text messaging is a telecommunications service, it is subject to mandatory contribution obligations under section 254(d). 47 U.S.C. § 254(d). As discussed above, we are not proposing to classify text messaging as a telecommunications service or an information service in this Notice.

[152] 47 U.S.C. § 160.

52. We seek comment on the extent to which consumers are substituting text messaging for traditional voice services and other services that are subject to universal service contributions. Are there any reasons to treat short message service (SMS) or multimedia messaging service (MMS) differently for this analysis? Commenters should provide data to support their assertions.

53. We also seek comment on whether wireless providers include revenues generated through the use of common short codes in their text messaging revenues.[153] If common short code revenues are not reported as part of the text messaging revenues, are there any reasons to treat such revenues differently in calculating the universal service contributions?

54. We note that the telecommunications industry has seen explosive growth in the wireless segment over the last decade, with end-user mobile revenues reported on FCC Form 499-A almost tripling from $44 billion in 1999 to about $111 billion in 2010.[154] TIA estimates that U.S. spending on wireless voice in 2011 was $102.3 billion, and spending in wireless data was $73.6 billion.[155] TIA also estimates that spending in wireless data will exceed wireless voice by 2013, and by 2015 wireless data spending will be approximately double that of wireless voice.[156] Hand-in-hand with that growth has been the expansion of text messaging. In the most recent *Mobile Wireless Competition Report*, the Commission found that "consumers are increasingly substituting among voice, messaging, and data services, and, in particular, are willing to move from voice to messaging or data services for an increasing portion of their communications needs."[157] One study showed that over 70 percent of U.S. mobile subscribers used text messaging on their mobile devices in 2010.[158] Industry-wide text messaging revenues were approximately $11 billion in 2008 and $16 billion in 2009,[159] and we estimate that those revenues were approximately $17 to $19 billion in 2010 and 2011.[160] CTIA estimates that approximately two trillion text messages were sent in 2011, in comparison to 113.5 billion in 2006.[161] We seek comment

[153] A common short code is a number to which a text message can be sent that is common across all wireless service providers in the United States. The Common Short Code Administration (CTIA with Neustar) assigns common short codes to applicants allowing them to be used for the same application across multiple wireless providers. Under this system, users send a short message to a five or six-digit short code that belongs to a particular content provider and then receive, on their handsets, the information requested from that provider. The short codes can be used for applications such as voting in TV or radio shows, or receiving specific information such as a sports or weather update. *See* CTIA-The Wireless Association, *About CSCs—Common Short Codes*, Common Short Code Administration, *available at* http://www.usshortcodes.com/csc_csc.html (last visited Apr. 17, 2012).

[154] *2011 Universal Service Monitoring Report*, Table 1.1.

[155] 2012 TIA Review and Forecast at 1-6.

[156] *Id.*

[157] *Fifteenth Mobile Wireless Report*, 26 FCC Rcd at 9687-9688, para. 4.

[158] *Id.* at 9765, Chart 9.

[159] *Id.* at 9677-9677, para. 4 (2008 estimate); XO Sept, 17, 2010 *Ex Parte* Letter at 8 (2009 estimate). The Commission has not developed an estimate of text messaging revenues after 2009 because the industry has stopped reporting text messaging revenues separately from overall mobile data service revenues. *Fifteenth Mobile Wireless Report*, 26 FCC Rcd at 9676-9677, para. 4.

[160] *See* Chetan Sharma, *US Mobile Messaging Market – Growth and Opportunities* 5 (2011), *available at* http://mobilebroadbandopportunities.com/chetansharma/Sharma3.pdf (last visited Mar. 6, 2012) (estimating that messaging revenues were approximately $17 billion in 2010); Chetan Sharma, *US Wireless Market Update Q2 2011* (Aug. 18, 2011), *available at* http://www.chetansharma.com/blog/2011/08/18/us-wireless-market-update-q2-2011/ (last visited Mar. 6, 2012) (reporting $5 billion in text messaging revenues for 2Q 2011).

[161] CTIA—The Wireless Association, *U.S. Wireless Quick Facts*, CTIA Advocacy, *available at* http://www.ctia.org/advocacy/research/index.cfm/aid/10323 (last visited Mar. 8, 2012) (annualizing mid-year 2011 and mid-year 2006 figures).

on the size of the text messaging marketplace, including the industry revenue figures referenced above, and whether this marketplace is likely to grow or shrink in the future.[162] Commenters who disagree with the estimates above should submit specific revenue data to support their assertions.

55. To the extent commenters advocate a position on whether text messaging providers should be assessed, we view it as highly relevant whether those commenters earn text message revenues themselves and, if so, whether they have reported it as assessable in recent years. We thus ask commenters to include in their comments their estimated recent text messaging revenues, and the extent to which they reported those revenues as assessable.[163] If we explicitly assess text messaging providers, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users? How would an assessment of text messaging providers affect the distribution of contribution obligations among various industry segments?

56. We also seek comment and data submissions on how assessing these providers of these services would affect the contribution base under the different methodologies proposed in Section V below. We note that to the extent that providers of text messaging also are providers of assessable voice services, explicitly assessing text messaging would not necessarily broaden the base, to the extent we were to adopt a non-revenues-based contribution methodology. We also seek comment and data on the extent to which service providers are currently treating these services as assessable.

3. One-way VoIP Service Providers

57. *Background.* In 2005, when the Commission first asserted regulatory authority over interconnected VoIP service providers, it defined "interconnected VoIP" as a service that permits users generally "to receive calls that originate on the [PSTN] *and* to terminate calls to the public switched telephone network."[164] In 2006, the Commission relied on this same "two-way" definition when it extended universal service contribution obligations to interconnected VoIP service providers.[165] At the same time, the Commission recognized that the definition of interconnected VoIP service for purposes of universal service contributions might "need to expand as new VoIP services increasingly substitute for traditional phone service."[166]

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[162] *See, e.g.*, Jenna Wortham, *Free Texts Pose Threat to Carriers*, New York Times (Oct. 9, 2011), *available at* http://www.nytimes.com/2011/10/10/technology/paying-to-text-is-becoming-passe-companies-fret.html?pagewanted=all (last visited Mar. 14, 2012) (discussing analyst reports that free messaging applications could reduce carrier text messaging profits); Chetan Sharma, *US Wireless Market Update: Q4 2011 and Full Year 2011* (Mar. 19, 2012), *available at* http://www.chetansharma.com/USmarketupdate2011.htm (stating that US text messaging continued to grow in 2011, but at a slower pace).

[163] We note that companies may request confidential treatment for any such company-specific data, or related data, submitted in response to this Notice. 47 C.F.R. § 0.459.

[164] 47 C.F.R. § 9.3 (emphasis added); *see also IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257–58, para. 24 (2005) (*VoIP 911 Order*).

[165] 47 C.F.R. § 54.5 (referring to rule 9.3 to define an interconnected VoIP service for contribution purposes); *see also 2006 Contribution Methodology Order*, 21 FCC Rcd at 7536, para. 34 & n.119.

[166] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36. The Commission also noted that USF obligations would continue to apply to any modified definition of "interconnected VoIP." *Id.* at n.129.

58. *Discussion.* We seek comment on whether the Commission should exercise its permissive authority under section 254(d) to include in the contribution base providers of "one-way" VoIP with respect to such service offerings, regardless of the statutory classification of such services.[167] Such offerings would include all services that provide users with the capability to originate calls to the PSTN *or* terminate calls from the PSTN, but in all other respects meet the definition of "interconnected VoIP." We seek comment below on a potential definition of such services for the purpose of USF contributions:

> *One-way VoIP service. A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network.*

59. As noted above, the Commission has previously found it to be in the public interest to extend universal service contribution obligations to discrete classes of providers that compete with common carriers and that benefit from universal service through their interconnection with the PSTN, including providers of interconnected VoIP service.[168] The Commission found that it is in the public interest to require providers of two-way interconnected VoIP services to contribute, noting that among other things, such providers benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN, and that interconnected VoIP increasingly was being used by consumers in lieu of traditional voice telephony.[169]

60. To what extent does this rationale apply today to one-way VoIP services? We note that one-way VoIP enables consumers to originate or terminate calls on the PSTN.[170] Would the public

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[167] The Commission has not classified one-way VoIP as a telecommunications service or an information service. Consistent with precedent, the Commission may exercise its permissive authority to subject a provider or service to universal service contribution requirements without classifying such a provider or offering as a "telecommunications service" or "information service," as those terms are defined in the Act. *See, e.g., 2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35. To the extent we conclude that one-way VoIP should not be subject to contribution obligations, we seek comment on whether we should exercise our forbearance authority under section 10 to the extent one way VoIP could be viewed as a telecommunications service.

[168] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540–41, para. 43; *see also Universal Service First Report and Order*, 12 FCC Rcd at 9184–85, para. 797.

[169] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540-41, para. 43. The Commission found that like other contributors to the Fund, interconnected VoIP providers are "dependent on the widespread telecommunications network for the maintenance and expansion of their business," and they "directly benefit[] from a larger and larger network." *Id., quoting TOPUC*, 183 F.3d at 428. The Commission also relied on its ancillary jurisdiction under Title I as an additional source of authority to require contributions from interconnected VoIP providers. *See id.* at 7541–43, paras. 46–49. The Commission noted that the Act grants subject matter jurisdiction over interconnected VoIP because it involves "transmission" of voice by wire or radio, and that imposing contribution obligations on interconnected VoIP providers was "reasonably ancillary" to the effective performance of the Commission's responsibilities to establish "specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service." The Commission also noted that interconnected VoIP providers "benefit from their interconnection to the PSTN." *See id.* at 7538–40, paras. 39–42.

[170] Under existing precedent, a provider of one-way VoIP provides telecommunications. *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18013-4, para. 954; *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41. In this regard, we note that when the Commission exercised permissive authority over two-way interconnected VoIP, it reasoned that interconnected VoIP providers provide telecommunications regardless of whether they own or operate their own transmission facilities or arrange for the end user to access the PSTN through a third party (commonly referred to as "over-the-top interconnected VoIP"). *See id.* ("To provide this (continued...)

interest be served by exercising permissive authority over one-way VoIP to further our proposed goals of efficiency, fairness and sustainability?

61. In particular, we seek comment on whether competitive neutrality concerns now support the inclusion of one-way VoIP services within the contribution base. Some parties argue that the one-way VoIP exemption is "an enormous loophole" that creates competitive disparities.[171] USTelecom has argued that the current system "unfairly penalizes traditional voice providers (and ultimately their customers) and artificially skews the market."[172] One-way VoIP providers, on one hand, and providers of traditional telephone and interconnected VoIP services, on the other hand, have acknowledged that they compete against each other.[173] XO, for example, argues that the exemption provides "a significant artificial cost advantage" for non-assessable services that provides "a powerful incentive for consumers to replace [assessable services] with less costly non-assessable services."[174] We seek comment on the extent of competition between one-way VoIP and other services that are subject to assessment, and how that should affect our analysis. Commenters are encouraged to provide data to support their analysis. If one-way VoIP providers are brought into the contribution base, what would be the appropriate transition period?

62. We seek comment on the size of the one-way VoIP marketplace in the United States, and whether this marketplace is likely to grow or shrink in the future. Skype, which separately offers a service that permits users to receive calls that originate on the PSTN and a service that permits users to terminate calls to the PSTN, reported that it had over 8.8 million paying users worldwide for its SkypeIn and SkypeOut services and domestic revenues of over $140 million in 2010.[175] How many providers of one-way VoIP are there, and who are other major providers of such services? What are the overall U.S. revenues for this group of providers, and how many customers do they have? Commenters are encouraged to provide specific data to support their assertions. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in Section V below.

63. If we assess one-way VoIP, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users, and how would it impact low-income consumers? How would an assessment of one-way VoIP affect the distribution of contribution obligations among various industry segments?

64. We note that, in other contexts, the Commission has subjected one-way VoIP providers to the same regulatory requirements as two-way interconnected VoIP providers. For instance, in the *USF/ICC Transformation Order and FNPRM,* the Commission included providers of one-way VoIP

(Continued from previous page)
capability [telecommunications], interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others.").

[171] XO Sept. 17, 2010 *Ex Parte* Letter at 8.

[172] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

[173] Skype S.a.r.l., *Amendment No. 2 to Form S-1 Registration Statement* at 132 (filed with the SEC, Mar. 4, 2011) (Skype S-1) at 30–31 (listing primary competitors as Internet and software companies, telecommunications companies and hardware-based VoIP providers, and small and medium-size enterprise telecommunications services providers); Verizon Oct. 28, 2009 Comments at 5 ("IP-based services such as Google Voice, SkypeIn, ooma, and magicJack . . . compete with traditional telephone services").

[174] XO Sept. 17, 2010 *Ex Parte* Letter at 5–6.

[175] Skype S-1 at 132.

services (defined as services that "that allow end users to place calls to, or receive calls from the PSTN, but not both") within the intercarrier compensation framework for VoIP-PSTN traffic.[176] Providers of "non-interconnected VoIP," a term that can include providers of one-way VoIP, also are required to contribute to the interstate Telecommunications Relay Services (TRS) Fund under the Twenty-First Century Communications and Video Accessibility Act of 2010.[177] We seek comment on the relevance of these precedents to the question of whether one-way providers should contribute to universal service.

4. Broadband Internet Access Service Providers

65. *Background.* The State Members of the Federal-State Universal Service Joint Board (State Members of the Joint Board) have proposed that the Commission include "broadband and services closely associated with the delivery of broadband" in the base, including Digital Subscriber Line (DSL), cable, and wireless broadband Internet access.[178] Other commenters also support extending assessments to broadband Internet access.[179]

[176] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18006-7, para. 941. *See also id.* at 18008-18018, paras. 943-959 (adopting an intercarrier compensation framework that brings all VoIP-PSTN traffic within the section 251(b)(5) framework).

[177] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, §103(b), 124 Stat. 2751, 2755 (2010) (CVAA). *See Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14543, para. 23 (2011) (requiring providers that offer non-interconnected VoIP services on a stand-alone basis for a fee to contribute to the TRS Fund). "Non-interconnected VoIP services" are defined under the CVAA as "service that enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and requires Internet protocol compatible customer premises equipment; and does not include any service that is an interconnected VoIP service." 47 U.S.C. § 153(36).

[178] Comments of State Members of Universal Service Joint Board, WC Docket No. 10-90 *et al* (filed May 2, 2011) at 119 (State Members of Joint Board CAF Comments). State Staff of the Joint Board have also developed proposals recommending that the base be expanded to include broadband Internet access service. Robert Haga *et al., The Omaha Plan: A White Paper to the State Members of the Federal-State Joint Board on Universal Service*, Feb. 2011, *available at http://www.kcc.state.ks.us/telecom/roundtable032011/Omaha_Plan.pdf* (last visited Apr. 17, 2012) (*Omaha Plan*); Peter Bluhm, Robert Loube, *Consultants' Plan for Universal Service: A White Paper to the State Members of the Federal-State Joint Board for Universal Service* (Feb 2011), *available at* http://www.kcc.state.ks.us/telecom/roundtable032011/Consultants_Plan.pdf (last visited Apr. 17, 2012) (*Consultants' Plan*); Joel Shifman, *Shifman's Universal Service and Intercarrier Compensation Reform Plan: A White Paper to the State Members of the Federal-State Joint Board on Universal Service* 4 (2011), *available at* http://www.kcc.state.ks.us/telecom/roundtable032011/Shifman_White_Paper.pdf (last visited Apr. 17, 2012) (*Shifman Plan*).

[179] *See, e.g.,* National Exchange Carrier Association, Inc. *et al* Joint Comments, WC Docket No. 10-90 *et al.* at 68 (filed July 12, 2010) (stating that the Commission should assess broadband Internet access). *See also* AT&T Aug. 24, 2010 *Ex Parte* Letter (stating that "any new mechanism must reflect the entire broadband ecosystem"); Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Aug. 19, 2010); Letter from Matthew F. Wood, Media Access Project, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.* (filed Aug. 19, 2010); Letter from Jeffry H. Smith, GVNW Consulting, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.* (filed Aug. 16, 2010); Letter from Kenneth E. Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 19, 2010); Letter from Kenneth E. Hardman, Counsel for Association of TeleServices International, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Aug. 19, 2012); Sprint Aug. 20, 2010 *Ex Parte* Letter.

66. In 2002, the Commission sought comment on whether and how broadband Internet access service providers should contribute to universal service.[180] In the *Wireline Broadband Internet Service Access Order,* the Commission classified wireline broadband Internet access as an information service.[181] The Commission also recognized, however, that wireline broadband Internet access service includes a provision of telecommunications.[182] In the *Wireline Broadband Internet Access Order,* the Commission stated that it intended to address contribution obligations for providers of broadband Internet access in a comprehensive fashion in the future, either in that docket or in this docket.[183]

67. *Discussion.* Some commenters have suggested that the Commission should exercise its permissive authority to assess providers of broadband Internet access services.[184] Several parties, however, have expressed concern that assessing broadband Internet access could discourage broadband adoption.[185] We seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the potential impact of assessing broadband Internet access services on consumer adoption or usage of services. Would assessing broadband Internet access service in the near term undermine the goals of universal service? Could the Commission address such concerns by phasing in contributions for mass market broadband Internet access services over time?

68. In the *USF/ICC Transformation Order*, we adopted new rules to ensure that robust and affordable voice and broadband, both fixed and mobile, are available to Americans throughout the nation. In this proceeding, we are looking to update and modernize the method by which funds are collected to support universal service. Some have expressed concern that assessing broadband Internet access may indirectly raise the price of broadband Internet access for some consumers.[186] To what extent, if any, would assessing broadband services discourage consumers from subscribing? To what extent, if any, would that in turn slow down deployment of broadband infrastructure? We seek comments and economic

[180] *Wireline Broadband NPRM*, 17 FCC Rcd at 3048–56, paras. 65–83 (seeking comment on whether requiring wireline broadband Internet access service providers and other facilities-based providers of broadband Internet access services to contribute to universal service would be in the public interest); *see also Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4853, para. 110; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95 (seeking comment on how to stabilize the contribution base, including the assessment of broadband data connections).

[181] *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14863-64, para. 14. The Commission has similarly classified as an information service broadband Internet access services provided over cable modem, wireless, and broadband over power line facilities. *Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4822, para. 38 (cable modem); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5909-11, paras. 22-27 (2007) (wireless broadband); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (broadband over power lines).

[182] *Brand X*, 545 U.S. at 987-89; *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14861, 14864, paras. 10, 15.

[183] *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14915, para. 112.

[184] *See supra* nn. 178-179 (citing comments and letters suggesting that the Commission assess broadband Internet access services from the State Members of the Joint Board, trade associations, contributors, and other parties).

[185] *See* Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2 (filed Aug. 10, 2010) (Free Press Aug. 10, 2010 *Ex Parte* Letter); NCTA Aug. 20, 2010 *Ex Parte* Letter at 2.

[186] *See, e.g.,* Free Press Aug. 10, 2010 *Ex Parte* Letter, at 2.

analyses that address the overall effect on broadband deployment of assessing or not assessing broadband.[187]

69. The State Members of the Joint Board recommend that both telecommunications services and information services (such as broadband Internet access services) should be assessed and suggest that if most of the revenues currently reported on FCC Form 499 Line 418 were assessed, that would reduce the contribution factor to approximately two percent.[188] They also suggest this would simplify billing "since the new federal USF surcharge rate would generally apply to an end user's total bill."[189] We seek comment on this recommendation of the State Members of the Joint Board. Would such an approach make telecommunications more affordable for consumers with lower overall telecommunications expenditures? What is the relationship between household income and the percentage of a household's telecommunications bill subject to assessment under the current system, and what would it be under the State Members' proposed approach? Would such an approach affect consumer adoption of telecommunications services that are not currently assessed? We ask commenters to provide any analysis and data regarding their estimated reduction in the contribution factor, if we were to require contributions based on the total bill. If we were to assess broadband Internet access, to what extent would that reduce the contribution factor if we maintain a revenue-based methodology?

70. If the Commission does assess broadband Internet access service, now or at some point in the future, should the Commission assess all forms of broadband Internet access, including wired (including over cable, telephone, and power-line networks), satellite, and fixed and mobile wireless? Should it assess mass market broadband Internet access as well as enterprise broadband Internet access? As a practical matter, how would the Commission differentiate between mass market broadband Internet access, and other forms of broadband Internet access, and would such a distinction create any distortions in the marketplace?

71. We note that TIA estimates the wired broadband Internet access marketplace to be $38.3 billion in 2011 and $40.3 billion in 2012, and the marketplace for wireless data services to be $73.6 billion in 2011 and $89.8 billion in 2012.[190] TIA also projects wireless data services to be over $140 billion, or double that for wireless voice, by 2015.[191] It is not clear, however, from how TIA presents the data whether its estimates include both enterprise as well as mass market broadband Internet access. To what extent are any of these revenues in the contribution base today? What proportion of those revenues should be considered mass market broadband Internet access, if we were to retain a revenues-based system but adopt an approach that would exempt mass market broadband Internet access services from contribution obligations? Under such an approach, how should we define "mass market"?[192]

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[187] *See* 47 U.S.C. § 1302(a) ("The Commission . . . shall encourage the deployment [of broadband] on a reasonable and timely basis" and, upon finding that broadband is not "being deployed to all Americans in a reasonable and timely fashion," to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.").

[188] State Members of Joint Board CAF Comments at 118-19.

[189] *Id.* at 120.

[190] 2012 TIA Review and Forecast at 1-12, 4-4.

[191] *Id.* at 1-6.

[192] For purposes of this discussion, we note that the term "mass market" often is used to refer to a service marketed and sold on a standardized basis to residential customers and small businesses. *See, e.g., AT&T and BellSouth Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5710, para 89 n.259 (2007) (*AT&T and BellSouth Order*); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18336, para. 82, n.243 (2005); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control,* WC Docket No. 05-75, (continued...)

72. In addition to our questions above regarding the effects on adoption of assessing broadband Internet access, we seek comment on whether exercising our permissive authority with respect to broadband Internet access services would be consistent with the Act and our potential goals for contributions reform, namely, creating greater efficiency, fairness, sustainability, and other goals that commenters identify. If we assess broadband Internet access services, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between enterprise and mass market customers if we assess only enterprise broadband Internet access services, only mass market broadband Internet access services, or all broadband Internet access services? How would these different approaches to assessing broadband Internet access services affect the total average contribution impact for mass market end users? How would they affect the distribution of contribution obligations between services offered to low-volume and high-volume users, or between low-income and higher-income users? How would an assessment of broadband Internet access services affect the distribution of contributions among various industry segments? Would assessing retail broadband Internet access service eliminate the current competitive disparity that exists today between providers that contribute on their broadband transmission (small rate of return companies) and their competitors, who do not?

5. Listing of Services Subject to Universal Service Contribution Assessment

73. Section 54.706 of our rules sets forth a non-exhaustive list of services that are currently included in the contribution base.[193] Should we continue to specify in our codified regulations specific services that are subject to assessment? Should that list be updated to reflect marketplace changes over the last decade? Does it advance our potential goals for reform of providing predictability and simplifying compliance and administration to maintain a non-exhaustive list of services that are subject to contributions, which by definition does not provide clarity as to whether services not on the list are subject to contribution obligations? Could we adopt a simpler approach that is flexible enough to be applied to services that exist today and ones that will emerge in the future, without a need to continually update our codified rules? Should the Commission periodically set forth a list of assessable services, similar to the eligible services list used for the schools and libraries universal service support mechanism?[194]

C. Determining Contribution Obligations Through a Broader Definitional Approach

74. In the previous section, we inquired about using our section 254(d) permissive authority or other tools to modify or clarify the contribution obligations of providers of specific services. In this section, we seek comment on an alternative approach: exercising our permissive authority to craft a general rule that would specify which "providers of interstate telecommunications" must contribute, without enumerating the specific services subject to assessment. Like the approach discussed above, such

(Continued from previous page)
Memorandum Opinion and Order, 20 FCC Rcd 18433,18477, para. 83, n.245 (2005). The term does not include enterprise service offerings, which are typically offered to larger organizations through customized or individually negotiated arrangements. *See, e.g., AT&T and BellSouth Order*, 22 FCC Rcd at 5709-10, para. 85 ("[E]nterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), . . . contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), . . . contracts are generally for customized service packages, and [] the contracts usually remain in effect for a number of years.").

[193] The list includes cellular telephone and paging services, mobile radio services, operator services, personal communications services (PCS), access to interexchange service, special access service, WATS, toll-free service, 900 service, message telephone service (MTS), private line service, telex, telegraph, video services, satellite service, resale of interstate services, payphone services, and interconnected VoIP services. 47 C.F.R. § 54.706(a).

[194] *See, e.g., Schools and Libraries Universal Service Mechanism,* CC Docket No. 02-6, Order, DA 11-1600 (rel. Sept. 28, 2011) (releasing funding year 2012 eligible services list).

a rule would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. Such a rule could potentially produce a more sustainable contribution system by avoiding the need to continually update a list of specific services subject to assessment. At the same time, such an approach leaves open the possibility of carving out or excluding a specifically defined list of providers or services, if inclusion of those providers or services is not in the public interest.

75. For example, we seek comment on exercising our permissive authority to adopt a rule such as the following:

> *Any interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users.*

76. The rule above is intended to encompass only entities that provide transmission to their users, whether using their own facilities or by utilizing transmission service purchased from other entities. As discussed above, the provision of "telecommunications" means, in part, the provision of transmission capability.[195] Under the approach historically taken by the Commission, some, but not all, providers of information services "provide" telecommunications. By statutory definition, an information service provider offers the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."[196] In the past, the Commission has found that the telecommunications component may be provided by the information services provider *or* the customer.[197] In other words, some information service providers "provide" the telecommunications required to utilize the information service, but others require their customers to "bring their own telecommunications" (in other words, to "bring their own transmission capability").[198] The rule set forth above is intended to include entities that provide transmission capability to their users, whether through their own facilities or through incorporation of services purchased from others, but not to include entities that require their users to "bring their own" transmission capability in order to use a service.[199] This is consistent with Commission precedent where the Commission has exercised its permissive authority to extend USF contribution requirements to providers of telecommunications that are competing directly with common carriers.[200] We seek comment on whether the rule would achieve this intended result. To

[195] *See supra* Section IV.A.1.

[196] 47 U.S.C. § 153(24).

[197] *Pulver Order*, 19 FCC Rcd at 3315–16, para. 14; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11522, para. 41 (1998) ("When an entity offers subscribers the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications,' it does not provide telecommunications; it is using telecommunications."); *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, Order on Remand, 16 FCC Rcd 9751, 9759, para. 17 (2001) (*Non-Accounting Safeguards Order on Remand*) ("Information services therefore are, as explicitly stated in the statutory definition, conveyed 'via telecommunications,' whether or not the telecommunications component is separately supplied by *either the provider or the customer*." (emphasis added)).

[198] *See Vonage*, 489 F.3d at 1241 (a provider of "information services" can also be a "provider of telecommunications" for purposes of section 254(d)).

[199] An example of an information service that would fall outside the scope of this rule might be an email service that the consumer accesses through a separately purchased broadband Internet access connection.

[200] *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 9183–85, paras. 794–97 (extending contribution obligations to private line service providers and payphone aggregators based, in part, on the fact that these providers compete directly with common carriers subject to mandatory contribution authority).

the extent the rule above would not achieve this intended result, we seek comment on how the rule could be altered to achieve this result.

77. We seek comment on whether a rule such as the one above would further our proposed goals of contributions reform by improving efficiency, fairness, and the sustainability of the Fund. Would adopting such a rule provide sufficient guidance to potential contributors regarding their contribution obligation? Would such a rule be simple to administer, monitor, and enforce? Would it create market distortions or impede innovation?

78. The National Broadband Plan recommended that however the Commission chooses to reform contribution methodology, it should take steps to minimize opportunities for arbitrage as new products and services are developed, so that there is no need to continuously update regulations to catch up with changes in the market.[201] Would a rule like the one discussed above achieve these goals, minimizing opportunities for arbitrage and eliminating the need to continuously update regulations? Or, alternatively, would it result in new definitional disputes and potential uncertainty?

79. Could the above rule be read to make content fees assessable when content is provided by the provider of the interstate telecommunications?[202] For example, could an IP-based video-on-demand service be assessable? We note that cable services are regulated under Title VI of the Act, and that video service providers are currently only required to contribute to the extent they provide interstate telecommunications services or other assessable telecommunications.[203] We also note that many video-on-demand services are being provided through Internet web sites, and thus are services that require the viewer to bring their own "telecommunications" (*i.e.*, Internet access). Could the above definition lead to the assessment of any other services that compete largely or primarily against services that remain non-assessable? If so, would this lead to competitive distortions? How could the definition be altered to avoid this result?

80. As noted above, the Commission has determined that "over-the-top" interconnected VoIP providers provide transmission to or from the PSTN to end users, and has subjected these services to contribution obligations. Even where a user obtains Internet access from an independent third party to use an interconnected VoIP service, an over-the-top interconnected VoIP provider must still supply termination to the PSTN for outgoing calls (which is not covered by the Internet access service), and origination from the PSTN for incoming calls (which again is not covered by the Internet access service). Over-the-top VoIP providers generally purchase this access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider's media gateway. The Commission held that origination or termination of a communication via the PSTN is "telecommunications," and over-the-top interconnected VoIP providers, like other resellers, are providing telecommunications when they provide their users with the ability to originate or terminate a communication via the PSTN, regardless of whether they do so via their own facilities or obtain transmission from third parties.[204] Are there legal or policy considerations that would warrant revisiting those rationales, if we were to exercise our permissive authority as set forth above? Are there reasons to extend or not extend the rationale above to other services that provide origination or termination of a communication via the PSTN? Would interconnected VoIP providers fall under the definition of an assessable service set forth in this section? If the objective is to include only entities that provide a

[201] *National Broadband Plan* at 149.

[202] In Section V.A.1 below, we seek comment on issues concerning apportionment of revenues between assessable and non-assessable services under a revenues-based system.

[203] *Universal Service First Report and Order*, 12 FCC Rcd at 9176, para. 787.

[204] *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7539-40, para. 41.

physical connection (wired or wireless), should we consider entities that provide PSTN origination or termination to be included within that group? If not, should we alter the proposed definition, or should we add some additional provisions specifically including additional services, like interconnected VoIP or other services that are substitutable for assessable services, for assessment?

81. The State Members of the Joint Board have proposed an alternative broad definition, recommending that the Commission exercise its permissive authority to broaden the contributions base to include "all services that touch the public communications network."[205] The State Members conclude, however, that contributions should not be required for "pure content delivered by non-telecommunications over broadband facilities." They acknowledge that their proposed rule could result in difficult line drawing problems when the same company sells both broadband services and content.[206] We seek comment on the State Members' proposal.

82. *Potential Exclusions.* If we were to adopt a rule such as the one above, we seek comment on whether we should adopt any additional limitations.

83. *Non-Facilities-Based Providers:* The rule discussed above would assess providers of interstate telecommunications whether or not they own the physical facility, or hold license to the spectrum, that is used to provide interstate telecommunications. In the alternative, should we limit contribution obligations to facilities-based providers, and if so, how should we define "facilities-based"? For example, would a provider be considered "facilities-based" for contributions purposes if it provides service only partially over its own facilities?[207] Should we define "facilities-based" services for contributions purposes as those provided over unbundled network elements, special access lines, and other leased lines and wireless channels that the provider obtains from another communications services provider?[208] For example, EarthLink has suggested that non-facilities-based providers of Internet access service do not provide the "transmission service."[209] We seek comment on this viewpoint. The Commission's contribution methodology has never exempted non-facilities-based telecommunications providers from their obligation to contribute, and the Act does not itself distinguish between facilities-based and non-facilities-based telecommunications providers for purposes of contribution obligations. We note that the Commission has previously found resellers to be telecommunications carriers supplying telecommunications services to their customers even though they do not own or operate the transmission facilities.[210] Carriers that incorporate transmission obtained from other providers into their own telecommunications services are currently subject to contribution requirements under the mandatory contribution requirement in section 254(d). Likewise, firms contribute today when they resell private line

[205] State Members of Joint Board CAF Comments at 118. They suggest that the "public communications network" should be defined as "the interconnected communications network that uses public rights of way or licensed frequencies for wireless communications." As noted above, under their proposal, this would include "broadband and services closely associated with the delivery of broadband" in the base, including DSL, cable, and wireless broadband. State Staff of the Joint Board have also developed proposals recommending that the base be expanded to include broadband Internet access service. *Omaha Plan* at 20-21; *Consultants' Plan* at 2; *Shifman Plan* at 4.

[206] The State Members suggest Westlaw or Lexis as examples of services that should not be assessed. State Members of Joint Board CAF Comments at 119-20.

[207] *i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A),* CC Docket No. 96-45 *et al,* Order, 25 FCC Rcd 8784, 8785, para. 3 (2010); *see* 47 U.S.C. § 214(e)(1)(A).

[208] *See* 47 C.F.R. § 1.7001(a)(1).

[209] Comments of Earthlink, Inc., GN Docket No. 10-127, at 18 (filed July 15, 2010).

[210] *Universal Service First Report and Order,* 12 FCC Rcd at 9179, para. 787 (identifying resellers as telecommunications carriers that provide interstate telecommunications services for purposes of section 254(d)).

service provided by other carriers.[211] Are there policy or administrative reasons not to exercise permissive authority over entities that incorporate telecommunications purchased from others into their own service offerings?

84. *Broadband Internet Access:* If we were to adopt a rule such as the one above, should we exclude broadband Internet access service? Several parties have expressed concern that assessing broadband Internet access could discourage broadband adoption.[212] As described above, we seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the impact of assessing broadband Internet access services on consumer or business adoption or usage of services. To what extent would assessment of universal service contribution obligations potentially deter adoption of such services? Is there less likelihood that assessment of USF contributions would deter adoption of business broadband Internet access services?

85. To the extent commenters believe that assessing mass market broadband Internet access service in particular could discourage broadband adoption or harm other Commission goals, we seek comment on a specific exemption for mass market broadband Internet access services (both fixed and mobile). If we were to take such an approach, how should we define enterprise versus mass market services, and from an administrative standpoint, how would carriers and USAC be able to distinguish between the two?[213] To what extent would such an exemption potentially distort how business and residential broadband Internet access is provided, as carriers may seek to characterize their offerings as "mass market" to avoid contribution obligations?

86. *Free or Advertising-Supported Services:* If we were to adopt a rule such as the one above, should we do so only with respect to providers that offer service for a subscription fee?[214] Given the broad meaning of "fee" in other contexts, how would we frame an exclusion for free or advertising-supported services? Would such an exclusion potentially cause marketplace distortions vis-à-vis firms that have business models that derive revenues from other sources, such as advertising revenues? Would imposing contribution obligations on free or advertising-supported services from contribution obligations discourage innovative offerings? Commenters should provide specific examples and supporting data regarding the business models of relevant services.

87. *Machine-to-Machine Connections:* If we were to adopt a rule such as the one above, should we exclude machine-to-machine services? Machine-to-machine connections have grown rapidly in recent years.[215] Would it be consistent with our statutory authority to exercise permissive authority over machine-to-machine communications, such as smart meter/smart grids, remote health monitoring, or remote home security systems? Should machine-to-machine connections be treated the same as connections between or among people? As discussed above, the Act defines the term "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and

[211] *See* 47 C.F.R. § 54.706(a)(11).

[212] *See supra* n.185 (*ex parte* letters expressing concern that assessing broadband Internet access service could discourage broadband adoption).

[213] *See supra* para. 70.

[214] Note that in the context of the definition of "telecommunications service," the Commission has held that "for a fee" broadly "means services rendered in exchange for something of value or a monetary payment." *Universal Service First Report and Order*, 12 FCC Rcd at 9167, para. 784.

[215] *See generally* OECD, *Machine-to-Machine Communications: Connecting Billions of Devices*, OECD Digital Economy Papers (OECD Publishing, Working Paper No. 192, 2012), *available at* http://dx.doi.org/10.1787/5k9gsh2gp043-en (last visited Mar. 26, 2012).

received."[216] In the case of machine-to-machine communications, who is the "user" that is specifying where the information should go? Is there any precedent outside the contribution methodology context that should inform our interpretation of the statutory term here? Should we conclude that all machine-to-machine connections that transmit information over the Internet include interstate telecommunications? How would assessing machine-to-machine communications impact marketplace innovation in this arena?

88. *Statutory Interpretation.* Above, we asked whether a general rule like that described in this section would provide sufficient guidance to potential contributors regarding their contribution obligation. The rule described in this section would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. The Commission would, however, still be required to determine whether services involved the provision of interstate "telecommunications." We seek comment on additional issues that may arise in interpreting the definition of "telecommunications" for contributions purposes as the communications marketplace evolves. We also ask how resolution of these questions in the context of USF contributions would impact other regulatory obligations, such as regulatory fees or other assessments that utilize the Telecommunications Reporting Worksheets.

89. First, we seek comment on how to interpret the statutory requirement that a telecommunications transmission must be "between or among points specified by the user." In particular, we seek comment on whether we should interpret "the user" to be a subscriber to the service in question. For example, suppose that Bookseller A sells an electronic reading device to Ms. Smith. The price of the device includes a 3G wireless connection that allows Ms. Smith to connect to Bookseller A's servers at any time and purchase e-books. Bookseller A, in turn, purchases the wireless bandwidth for the connection from Carrier B. In this instance, should we consider Ms. Smith to be the "user" of the service provided by Bookseller A? Alternatively, is Bookseller A the "user" of the service provided by Carrier B? Under the former view, would Bookseller A be viewed as "providing telecommunications" to Ms. Smith, and therefore a contributor on that service? Or should Carrier B be viewed as the entity that is providing telecommunications to Bookseller A, and therefore the contributor? What would be the potential effects in other regulatory contexts if the Commission were to interpret the term "user" in a new way here?

90. We seek comment on what it means for the user to "specify" the "points" of transmission. Many communications services today allow the user to specify the points of transmission – for example, telephone and text messaging services generally allow a user to reach any other user on the PSTN, and broadband Internet access services generally allow users to access any location on the Internet. Certain services, however, arguably do not allow the "user" to specify the endpoints of the communication. To return to the e-books example above, suppose that the free wireless connectivity on the reading device can *only* be used to communicate between the device and Bookseller A's server, and not to reach any other destination on the PSTN or the Internet. In that case, is Ms. Smith, Bookseller A's customer, "specifying" the "points" of the transmission, or is Bookseller A?[217]

91. We also seek comment on how to interpret the statutory requirement in the definition of "telecommunications" that the information transmitted must also be "of the user's choosing." How

[216] 47 U.S.C. § 153(50).

[217] Compare this hypothetical scenario to, for example, private line service which allows communications between fixed points chosen by the subscriber to that service. *See, e.g., American Telephone & Telegraph Company Private Line Rate Structure and Volume Discount Practices,* CC Docket No. 79-246, Notice of Inquiry and Proposed Rulemaking, 74 FCC 2d 226, 231, paras. 11-12 (1979) ("In a functional sense, a private line is a transmission channel providing access between or among points specified by the customer on a permanent, or virtually permanent basis during a specified time period. . . . In order to obtain access to the carrier's plant, the customer must first designate the geographical points at which service is desired.").

should we interpret this phrase? For example, suppose a doctor provides a remote monitoring device to a patient that can send information back to the doctor's office. The monitoring device is pre-programmed to transmit only certain types of relevant medical data. Assuming that the other statutory components of "telecommunications" are present, is this an instance where the patient should be deemed the "user" that is transmitting information "of his or her choosing," or would the fact that only information specified by the doctor or manufacturer that provides the device to the patient is transmitted mean that this communication does not meet the statutory definition of "telecommunications"?

92. We also seek comment on whether, under a rule such as the one described in this section, the Commission would have to interpret the statutory requirement that the transmission must be "without change in the form or content of the information as sent and received." Although information services often include a component that "processes" information in some way, the Commission has in the past recognized that an information service can also include a separate "telecommunications" component.[218] Furthermore, the Commission has previously found that while all information services require the transmission of information between customers and "computers or other processors," the form or content of the information is not altered during these transmissions, and such transmissions constitute "telecommunications."[219] Would we be required to revisit any aspect of these interpretations in light of changing technology and marketplace developments?

93. *Impact on the Contribution Base.* We seek comment on the number of additional contributors and impact on the contribution base if we were to adopt the general definitional approach discussed in this section, and whether those figures are likely to grow or shrink in the future. How would the answer to this question differ if we were to assess based on revenues, connections, numbers or some other alternative? For each contribution methodology scenario, what services and providers would contribute under such a rule that do not contribute today? To what extent are they contributing today? What other services, not already discussed above, might be included if we were to adopt the general definitional approach discussed in this section? How would the answer to these questions differ under the definitional approach discussed in this section, as opposed to the service-by-service approach discussed in the preceding section?

94. Finally, to the extent not already covered by the questions above, we request clear and specific comments on the Commission's legal authority and the type and magnitude of likely benefits and costs of each of these variants of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and an identification of all underlying assumptions.

V. HOW CONTRIBUTIONS SHOULD BE ASSESSED

95. In this portion of the Notice, we seek comment on how to simplify our contributions system, consistent with the Act and our proposed goals for reform. In particular, this section focuses on the question of how contributions should be calculated, whether based on revenues, connections, numbers, or a hybrid system, once we have resolved the threshold decision of which providers should contribute.

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[218] *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14910, para. 104 (finding that the transmission component of a facilities-based provider's offering of wireline broadband Internet access service is "telecommunications").

[219] *See Non-Accounting Safeguards Order on Remand*, 16 FCC Rcd at 9758, para. 16 ("All information services require the use of telecommunications to connect customers to the computers or other processors that are capable of generating, storing, or manipulating information. The transmission of information to and from these computers constitutes 'telecommunications,' for the transmission itself does not alter the form or content of the information").

96. Over the last decade, the Commission has sought comment on a number of proposals for alternative methodologies to the current revenues-based system, including methodologies based on connections, numbers, and various hybrid solutions.[220] The record is mixed on whether we should make modifications to our existing revenues-based system, or move to an alternative system such as connections or numbers.[221] Here, we seek comment on reforming the current revenues-based system as well as ask parties to update the record on these alternative methodologies. We seek comment on how each option would further our proposed goals and ask about potential implementation issues that are associated with specific methodologies. We ask commenters to provide data to quantify how potential rule changes would impact the Fund and reduce compliance costs and burdens.

97. We request specific comments on the type and magnitude of likely benefits and costs of each of the possible rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how any data were calculated and an identification of all underlying assumptions.

A. Reforming the Current Revenues-Based System

98. In this section, we seek comment on whether we should retain the existing revenues-based system, and if so, how we can reform the current system to provide greater clarity to contributors, thereby promoting efficiency, fairness, and sustainability. Specifically, we seek comment on the pros and cons of retaining a revenues-based system. We ask parties claiming significant costs or benefits of a revenues-based system to provide supporting analysis and facts for such assertions, including an explanation of how they were calculated and all underlying assumptions.

99. What are the benefits or disadvantages of retaining a revenues-based system for a transitional or indefinite period? Are there market distortions caused by the existing revenues-based system?[222] We solicit comment on whether the modifications discussed below would sufficiently address problems with the current revenues system. If we adopt any of the potential reforms discussed in this section to modify the revenues system, would such a system better serve our proposed reform goals than a connections-based, numbers-based, or other alternative contribution system? Would any of the potential reforms suggested in this section also make sense for a connections-based, numbers-based, or other alternative contribution system?

100. To the extent that we retain the current system, we seek comment on rules to simplify how revenues are apportioned for assessment, including the allocation of telecommunications service revenues between the intrastate and interstate jurisdictions, and the reporting of assessable revenues when a customer purchases a bundle of services only some of which are assessable. We also seek comment on how to assess revenues from information services and services that have not been classified as information or telecommunications services. Such adjustments could address some shortcomings in the current system that stakeholders have raised and could reduce administrative burdens on providers and

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[220] *See 2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766, para. 35; *2002 Second Contribution* Methodology *Order and FNPRM*, 17 FCC Rcd at 24986, 24989, paras. 72, 78; *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6686, App. B., para. 81.

[221] *Compare, e.g.*, XO Sept. 17, 2010 *Ex Parte* Letter at 7 (arguing for improving the revenues-based system); NASUCA Sept. 7, 2010 *Ex Parte* Letter at 1 (same), *with* Verizon Aug. 13, 2010 *Ex Parte* Letter (arguing for a numbers-based system); NCTA Aug. 20, 2010 *Ex Parte* Letter (same); WildBlue Sept. 9, 2010 *Ex Parte* Letter, Attach. at 3 (arguing for a connections-based system).

[222] The economics literature suggests that market distortions in a revenues-based system could potentially be reduced by including the broadest set of services in the contribution base and by assessing competing services at the same rate. *See* N. Gregory Mankiw, Matthew Weinzierl, and Danny Yagan, "Optimal Taxation in Theory and Practice," J. ECON. PERSP, Vol. 23, No. 4, Fall 2009, at 164-165.

USAC.[223] We also seek comment on alternative approaches to provide greater clarity regarding the respective obligations of wholesalers and their customers, which has been subject to much dispute.[224] We seek comment on adopting a value-added revenues system that would require contributions from each provider in the value chain,[225] or, in the alternative, substantially revising the reseller certification process. Adopting a value-added revenues system or revising the certification process could eliminate the complications and loopholes associated with the current carrier's carrier reporting requirements. In addition, we seek comment on measures to clarify our prepaid calling card reporting requirements to ensure that competitors are contributing in a consistent manner. Finally, we seek comment on eliminating the international-only and the limited international revenues exemptions and on modifying the *de minimis* exemption to reduce compliance burdens.[226]

1. Apportioning Revenues from Bundled Services

101. Today, many providers offer mass market end users bundled packages of voice (local and long distance), video, and/or broadband services. Similarly, many providers serving the enterprise market offer customized packages that provide voice and data connectivity as well as other services and products such as IT support, web hosting, data centers, network management, IP-based cloud computing, customer devices, networking and videoconferencing equipment, and more. Determining which portion of these and similar bundled offerings are subject to contribution to the Fund has been an issue of dispute and complexity.[227] Bundled offerings of telecommunications and information services present two contribution issues concerning how revenues from a bundled offering should be apportioned: (1) how to apportion revenues when the provider does not offer the assessable service (*i.e.*, telecommunications service or interconnected VoIP) in the bundle on a stand-alone basis, and (2) how to apportion revenues when the provider does offer the assessable service on a stand-alone basis, but does not explicitly allocate the discount on a bundled offering to specific services comprising the bundle. In this section, we seek comment on ways to simplify these determinations.

102. *Background.* Due to technological and marketplace changes over the last decade, providers are increasingly offering customers packages of bundled services that include both assessable telecommunications services (*e.g.*, voice) and information services that are not currently assessable (*e.g.*, broadband Internet access service), and these revenues must be apportioned between assessable and non-assessable services for contribution purposes. Our current contribution apportionment rules for bundled services, which were established over ten years ago in the *CPE Bundling Order,* give providers fairly wide latitude to determine assessable revenues within bundled services, which may result in contributors adopting different methodologies to determine their contribution base. Taken to an extreme, if

[223] *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 1-5 (outlining problems with the current contribution system).

[224] *See id.* at 3 (outlining problems with the wholesale-reseller certification process).

[225] *See infra* Section V.A.4.a.

[226] The Commission's current rules provide exemptions from contribution requirements for certain entities. *See* 47 C.F.R. §§ 54.706(c) (allowing entities to only contribute on revenues from interstate telecommunications if projected collected interstate end-user telecommunications revenues comprise less than twelve percent of their combined projected collected interstate and international end-user telecommunications revenues) and 54.708 (providing that certain providers are not required to contribute to universal service in a given year if their contributions would be less than $10,000).

[227] *See, e.g.*, XO Request for Review at 52, 59 (arguing that MPLS ports provide information services that are inseparable from the transmission functions); Masergy Petition for Clarification (seeking clarification on how to classify components of MPLS service); *see also* Comments of Google Inc., WC Docket No. 10-90, *et al.*, at 27 (filed Aug. 24, 2011) (stating that the proliferation of bundled service offerings has made it more and more difficult for carriers and regulators to separate telecommunications from information service-derived revenues).

contributors have unrestricted latitude to determine assessable revenues, it jeopardizes the stability of the Fund and could lead to competitive inequities in the marketplace.

103. In the *CPE Bundling Order*, the Commission established three methods by which providers could apportion revenues from a bundled offering for purposes of contribution assessment. First, a provider could apportion its revenues based on "unbundled service offering prices, with no discount from the bundled offering being apportioned to telecommunications service."[228] Second, a provider could treat all bundled revenues as telecommunications revenues.[229] Third, a provider could apportion its bundled revenues using "any reasonable alternative method" as long as the provider does not apply discounts to telecommunications services in a manner that attempts to circumvent its obligation to contribute to the Fund.[230] The first two methods were identified as "safe harbors" and presumed reasonable, while the Commission cautioned that carriers utilizing the third method would have to justify the reasonableness of their methodology in an audit or enforcement proceeding.[231] The Commission also stated that "we may in the future seek comment on whether we need to adopt additional rules."[232] Since that time, however, the Commission has not addressed any specific factual situations that would provide more clarity on what alternative methodologies might be viewed as reasonable. Thus, the Commission has not adopted a bright-line rule with respect to bundled offerings, but rather has given contributors substantial latitude in how they apportion bundled revenues.

104. *Discussion.* We seek comment on modifying our bundled offering apportionment rules to adopt more specific standards for determining what apportionment methods are deemed reasonable for allocating revenues from bundled offerings, or to eliminate carrier discretion in determining how to apportion revenues from bundled offerings. We ask whether doing so will further our proposed goals of making the contributions system more efficient and fair, minimizing compliance burdens, and reducing competitive distortions in the marketplace.

105. We are concerned that the lack of bright-line rules may encourage providers to minimize their allocation of revenues in a bundle to assessable services to reduce their contribution obligations in order to gain a competitive edge. A number of commenters have suggested, for instance, that this is a concern in the enterprise market, where there is fierce competition to win contracts from large corporate clients.[233] We seek data from commenters regarding what are common industry practices regarding the allocation of revenues from bundled offerings. To what extent do contributors rely on market studies of stand-alone services offered by other providers? To what extent do contributors allocate revenues based on the allocated cost of the underlying individual services? To what extent do contributors allocate revenues based on revenue reporting requirements imposed by other regulatory jurisdictions, such as cable franchising authorities or state sales tax authorities?

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[228] *CPE Bundling Order*, 16 FCC Rcd at 7447, para. 50.

[229] *Id.* at 7447, para. 51.

[230] *Id.* at 7448, para. 53.

[231] *Id.* at 7448, paras. 52–53.

[232] *Id.* at 7448, para. 54.

[233] *See, e.g.*, BT Americas June 8, 2009 Comments at 11 (stating that failure to clarify the classification of MPLS-enabled services will enable providers to circumvent their contribution obligation); Comments of Masergy Communications Inc., WC Docket No. 05-337 *et al.*, at 4 (filed Oct. 28, 2009) (stating that because the Commission's precedent on the proper classification of VPN-based services is not clear, it is not consistently applied by either service providers or USAC); Verizon Oct. 28, 2009 Comments at 14-15 (stating that the classification of revenues as information services or telecommunications services depends on the capabilities offered to the end user).

106. We seek comment on adopting a revised apportionment rule that would codify a modified version of the two safe harbors provided under the *CPE Bundling Order* for apportioning revenues from bundled service offerings and eliminate providers' discretion on how to apportion revenues derived from bundled services. Specifically, we seek comment on the following rule for USF contributions purposes:

> *If an entity bundles non-assessable services or products (such as customer-premises equipment) with one or more assessable services, it must either treat all revenues for that bundled offering as assessable telecommunications revenues or allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues).*

107. We seek comment on whether this rule would simplify the process of apportioning bundled revenues in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider does not offer stand-alone equivalent services? Would we need a separate rule to address such circumstances? If so, how should that rule be structured? Would the benefits of limiting the method by which providers determine assessable revenues for bundled services outweigh any potential benefits of allowing providers to present individualized showing, as permitted under the current rule? We seek comment and examples of instances where some providers of bundled services may be allocating assessable revenues differently than their competitors, creating a competitive disadvantage. Would eliminating the open-ended apportionment option in favor of the rule above minimize competitive disparities?[234] Would the rule change incentives to offer (or not offer) assessable services on an unbundled basis?

108. We seek comment on the technical aspects of such a rule. For example, if we were to adopt such a rule, how much discretion should carriers have in determining what constitutes a "stand-alone offering of equivalent service"? How could we prevent contributors from gaming a stand-alone option to minimize their assessable revenues? Should there be a requirement, for instance, that such a stand-alone offering be generally available and actually subscribed to by a minimum number of end users? If so, how and how many end users? Are there any alternative ways to ensure that contributors are not creating a sham stand-alone offering to minimize contribution obligations?

109. We also seek comment on whether such a rule would create competitive disparities between providers that offer stand-alone offerings of assessable services, and those that only sell bundled services in the marketplace. Should we require carriers that do not offer a stand-alone service themselves to rely on a market analysis of services offered by other carriers in the marketplace or a tariffed rate of another provider? If so, should we require such carriers to submit any such market analyses used for imputation purposes or third party tariffed rate to the Commission and to USAC? Should we require that the stand-alone offering price be objectively verifiable by the Commission or USAC, such as by reference to a public website or tariffed offering? What measures would need to be in place for USAC to be able to verify stand-alone pricing for business services, which are often individually negotiated for individual customers? Is there any reason to implement such a rule only for certain types of bundled offerings and not others, or certain classes of customers and not others? What is the least burdensome mechanism to ensure allocations are objectively verifiable?

110. We seek comment on how the rule would impact the overall contributions base, as well as the individual burden on consumers. What would be the impact of the rule on providers serving

[234] To illustrate the point, a wireline telecommunications provider in a particular area may allocate $22 in its triple play package to voice service, while a cable provider offering a functionally equivalent triple play package to the same residential location may allocate only $10 to the voice service in the package. The former provider may be at a competitive disadvantage as compared to the latter, because it would have a higher contribution burden.

consumers with lower telecommunications expenditures (such as a voice only subscriber with limited long distance calling) compared to providers serving consumers with higher expenditures (such as a triple-play subscriber)? How would such a rule affect consumers with lower telecommunications expenditures compared to consumers with higher expenditures? What would be the impact of such a rule on mobile providers, who increasingly are deriving revenues from bundled voice-data packages, and their consumers?

111. We also seek comment on alternative rule language as well as alternative means of determining contribution obligations for bundled service offerings. Parties that submit alternative proposals should explain how such proposals further our proposed goals of reform and are consistent with our legal authority. We ask commenters to quantify, where possible, how their proposed rule would impact the contribution base and total assessable revenues.

112. For each of these alternatives, we seek comment on how the approach would impact the overall contribution base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from bundled service offerings for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from bundled offerings?

113. As discussed above, the Commission has the authority to assess all providers of interstate telecommunications, if the public interest warrants. Would a contribution methodology that assesses the full retail revenues of bundled services that contain "telecommunications," as that term is defined in the Act, without safe harbors or the ability to present individualized showings, conform to the statutory requirements? Given the growth in bundled service offerings over the last decade, would adopting such a bright-line rule make the contribution base more stable and thereby serve the public interest? Would it further the principle of "equitable and non-discriminatory" contributions by reducing potential competitive distortions among providers and service offerings that apportion revenues using different methodologies? Would a simplified approach that assesses the total bill for bundled services promote administrative efficiency and reduce compliance and enforcement expenditures? Would it be appropriate to adopt such an approach even if the Commission chose not to make every component of a bundled service individually assessable, or would that create market distortions and discourage bundled offerings?

2. Contributions for Services with an Interstate Telecommunications Component

114. In this section, we seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications. For example, to the extent enterprise communications services that are implemented with MPLS protocols are information services that provide interstate telecommunications, we seek comment on whether we could and should assess the full retail revenues of such enterprise communications services, or instead should adopt a bright-line that would assess only a fraction or percentage of the retail revenues.

115. Would it be consistent with our statutory authority under section 254(d) to require contributions on the full retail revenues of an information service that provides interstate telecommunications? Is there a potential for competitive disparity, to the extent a non-facilities-based provider of such services is assessed on its retail revenues, and also may bear indirectly the cost of a universal service contribution on underlying transmission that it purchases from a wholesale provider? To what extent should the retail revenues derived from information services have some nexus with the underlying transmission component, in order for the full retail revenues to be assessed?[235] What are the

[235] The State Members of the Joint Board suggest, for instance, that pure content should not be assessed, while acknowledging difficult line drawing issues would arise in instances whether a broadband Internet access provider is also providing content. State Members of Joint Board CAF Comments at 119.

advantages and disadvantages of assessing retail information service revenues, if we were to exercise our permissive authority?

116. Alternatively, should we assess only the telecommunications (*i.e.*, the transmission) component, and if so, how would we determine what portion of the integrated service revenues should be associated with the transmission component? For example, the MPLS Industry Group proposes that revenues associated with the access transmission components of all MPLS-enabled services be imputed on a uniform basis and made subject to USF contributions obligations through Commission-established "MPLS Assessable Revenue Component" proxies.[236] In other cases, the underlying transmission is separately offered on a Title II basis, which could provide a basis for assessing only the revenues associated with the transmission component.[237] We seek comment on the MPLS Industry Group proposal. Is such a proposal workable for other similar services?

117. We seek comment on the following rule:

> *If an entity offers an assessable information service with an interstate telecommunications component, it must treat all revenues for that information service as assessable revenues, unless it offers the transmission underlying the information service separately on a stand-alone basis. If it offers the transmission on a stand-alone basis, it may treat as assessable revenues an amount consistent with the price it charges for stand-alone offerings of equivalent transmission.*

118. We seek comment on whether this rule would simplify the process of determining assessable revenues for information services in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider did not offer the underlying transmission on a stand-alone basis? In such circumstances, should we craft a rule that looks at the general retail price of such transmission services when offered on a stand-alone basis by other providers? Would the proposed rule change incentives to offer (or not offer) telecommunications transmission on an unbundled basis? Would such a rule create competitive disparities between providers that choose to offer transmission on a stand-alone basis (such as small rate-of-return carriers that offer broadband Internet access) and providers that do not offer transmission separately (such as cable operators in the same geographic area as those rate-of-return carriers)?

119. In the alternative, should we craft a rule, or a safe harbor, that provides for assessment of a certain percentage of the retail revenues of information services with a telecommunications (transmission) component? Would it be legally permissible for the Commission to assess a set percentage of the retail revenues, even when such percentage might exceed the allocated revenues associated with the

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[236] British Telecom, NTT America, Orange Business Services, Sprint Nextel Corporation, Verizon, and XO Communications (MPLS Industry Group) propose that the Commission assess only the transmission associated with MPLS-enabled services. Under the proposal, the Commission would establish a proxy or revenue value for different types of MPLS connections (based on capacity and distance). Such proxy would be similar to NECA tariffs for such services. For MPLS services, contributors would: (1) identify the speed of each access transmission component of their MPLS-enabled services on a customer-by-customer basis; (2) apply the appropriate proxy established by the Commission based on the speed of each access transmission component to determine their USF contribution base; and (3) apply the current USF factor to that contribution base. The remaining revenues derived from the MPLS-enabled services would not be assessed under their proposal. *See* Letter from MPLS Industry Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (MPLS Industry Group Letter).

[237] *See* Letter from Melissa E. Newman, CenturyLink to Marlene H. Dortch, Office of the Secretary, FCC, WC Docket 06-122 (filed Apr. 4, 2012) (discussing the possibility of assessing the transmission component of MPLS-enabled services using the Commission's permissive authority under section 254(d) of the Act).

underlying transmission in that information service? Would a set percentage be easier to administer, reduce compliance costs, and otherwise be in the public interest? Would it create competitive distortions? Should the percentage vary depending on the type of information service at issue? Is some other formula for determining the assessable percentage of retail revenues of an information service appropriate?

120. For each of these alternatives, we seek comment on how the approach would impact the overall contributions base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from information services for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from information services with an interstate telecommunications component?

3. Allocating Revenues Between Inter- and Intrastate Jurisdictions

121. The current revenues-based mechanism requires contributors to distinguish revenues from interstate and intrastate services, which has become increasingly difficult given today's communications marketplace. Such jurisdictional distinctions have become blurred and are often irrelevant from the perspective of consumers selecting and buying communications services.[238] In this section, we seek comment on ways to simplify the allocation of interstate and intrastate revenues for USF contributions and reporting purposes.

122. *Background.* Many of the services that have developed and flourished since the 1996 Act, such as wireless, interconnected VoIP service, text messaging, and flat-rate long-distance services, do not distinguish between inter- and intrastate communications from the consumer's perspective. Rather, these services enable consumers to communicate both within a state and across state lines, often for a price that does not depend on the jurisdiction of the call; *i.e.,* a user that places and receives only intrastate calls pays the same rate as another user that places and receives only interstate calls.[239] Allocating revenues between jurisdictions may be complicated and burdensome for contributors, and our current allocation rules may be unfair because they allow certain providers to choose among various methods of allocation, creating an incentive to minimize their contribution obligation.[240]

123. Since the initial implementation of the 1996 Act, contributors have been directed to report the amount of total revenues that are intrastate, interstate, and international using information from their books of account or other internal data systems.[241] To the extent the company cannot make that determination directly from its corporate books of account, it should use "good faith estimates."[242] In addition, wireless providers and interconnected VoIP service providers may use safe harbors or traffic studies to allocate their revenues. The safe harbors allow contributors to designate the following percentages of revenues (for the categories indicated) as interstate/international: paging services, 12 percent; wireless services, 37.1 percent; and interconnected VoIP services, 64.9 percent.[243]

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[238] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2-3.

[239] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17691, para 76.

[240] *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2.

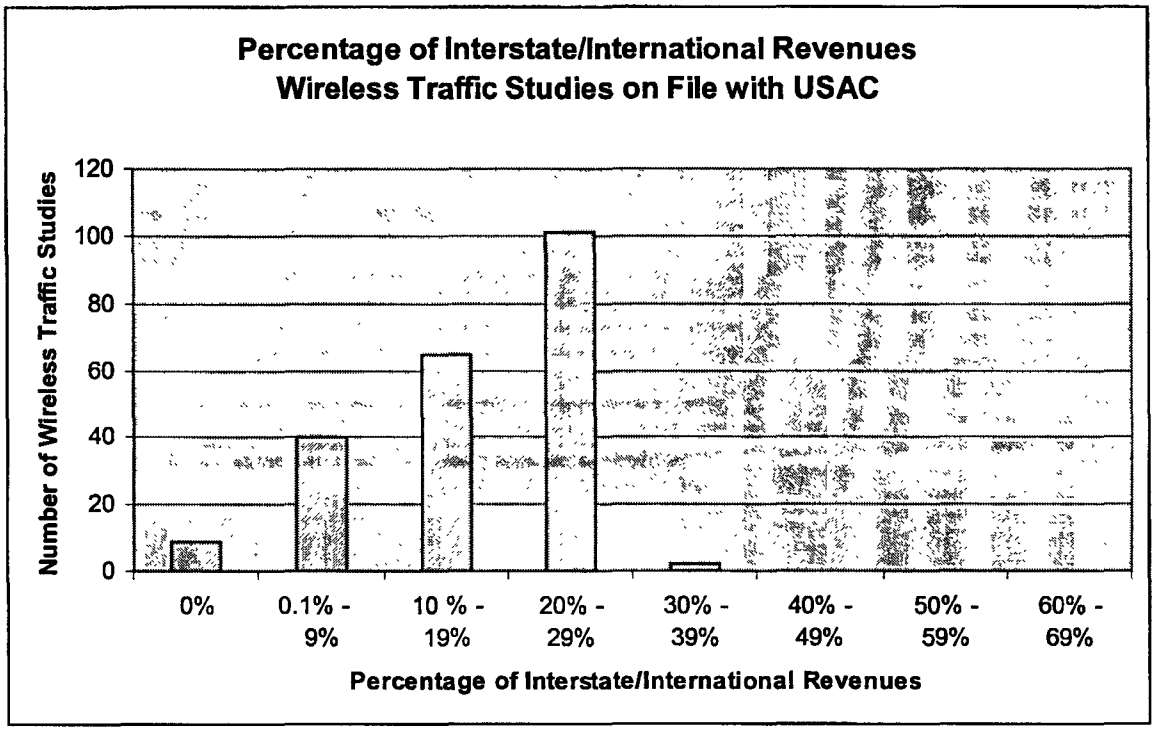
[241] As a practical matter, only incumbent local exchange companies allocate their revenues between the intrastate and interstate jurisdictions for cost-recovery purposes, pursuant to Part 36. *See* 47 C.F.R. §§ 36.201-36.225.

[242] *2012 FCC Form 499-A Instructions* at 23.

[243] *See Wireless Safe Harbor Order*, 13 FCC Rcd at 21259, para. 14 (setting a 12% safe harbor for paging providers); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7532, para. 25 (setting a 37.1% safe harbor for wireless telephony providers); *id.* at 7545, para. 53 (setting a 64.9% safe harbor for interconnected VoIP service (continued...)

124. As shown in Chart 3 below and Appendix B,[244] the 217 wireless providers submitting traffic studies (and not relying on safe harbors for allocating intrastate and interstate/international revenues) report anywhere from zero to 30 percent interstate/international revenues; the average of the traffic studies on file is 23 percent, with the median study reporting 19 percent interstate/international.

Chart 3



125. As shown in Chart 4 below and Appendix B,[245] VoIP providers have filed traffic studies showing interstate/international revenues ranging from zero to 59.9 percent. Forty-seven out of 243 VoIP providers have submitted traffic studies showing no interstate/international traffic. Overall, the average percentage for VoIP traffic studies is 22.1 percent interstate/international, with the median study reporting 14.7 percent interstate/international. Traffic studies on file thus report interstate/international usage significantly lower than the safe harbors for both wireless and interconnected VoIP.

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providers); *see also Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1417-18, paras. 13-15 (2008) (*Traffic Study Toll Allocation Order*).

[244] Staff analysis of wireless traffic studies on file with USAC as of January 19, 2012. *See* Appendix B for the data used to prepare this chart.

[245] Staff analysis of interconnected VoIP traffic studies on file with USAC as of January 19, 2012. *See* Appendix B for the data used to prepare this chart.